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JAMES H. MCKENNEY

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 343.

LYDIA BRADLEY, APPELLANT,

v.

H. W. LIGHTCAP, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLEE.

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Brief and Argument for Appellee.

STATEMENT.

The appellant in the court below filed her bill and amended bill, seeking to enjoin the State courts of Illinois from further proceedings in an ejectment suit then pending for trial in the Fulton County Circuit Court of Illinois wherein appellee was plaintiff and appellant was defendant. The ejectment suit had been once tried and appealed to the State Supreme Court which reversed the judgment of the lower court and remanded the cause for new trial. It had been retried in the lower court, which resulted in a judgment against the appellant. She then paid the cost and took a new trial under the statutes of the State,

and the suit was, at the time the bill was filed, pending for trial the third time, and the bills were filed to enjoin further proceedings in the State court. The parties were all residents of Illinois, and the only claim of a Federal question is that a certain statute of the State, as construed and applied by the State Supreme Court in the ejectment suit, is unconstitutional, and that the decision of the State Supreme Court, in that suit, deprived appellant of property without due process of law.

BRIEF.

I.

The Federal Circuit Court, in which the bill in this case was filed, had no right, power, or authority to enjoin the proceedings in the ejectment suit of Lightcap *v.* Bradley, then pending for trial in the State court.

Revised Statutes of the United States, Chap. 12, Title 13, Sec. 720.
Haines et al. *v.* Carpenter et al., 91 U. S. 254, 256.
Peck et al. *v.* Jenness et al., 7 How., 612, 624.
Dial *v.* Reynolds, 96 U. S., 340.
United States *v.* Parkhurst-Davis M. Co., 176 U. S., 317, 320.
Sargent *v.* Hilton, 115 U. S., 348.
Harkrader *v.* Wadley, 172 U. S., 148, 164.

II.

Independent of the statutory prohibition upon the Federal courts from enjoining proceedings in a State court, it is a settled rule that between courts of concurrent jurisdiction, the court first acquiring jurisdiction will retain it, and will not be interfered with by another court.

Central National Bank *v.* Stevens, 169 U. S., 432, 459, 460.
Ward *v.* Todd, 103 U. S., 327.
Porter *v.* Sabin, 149 U. S., 473, 480.
Story's Eq., Jur., Vol. 2, Sec. 900.

III.

Independent of the prohibition of Sec. 720, U. S. Revised Statutes, and of the rule of comity, either of which are sufficient to dispose of this case, there being no diverse citizenship, the bills do not present a case within the jurisdiction of the Federal Circuit Court.

(A) The presumption is, that the cause is without the jurisdiction of the Federal Circuit Court, unless the contrary affirmatively appears, and the facts alleged must compel the legal inference that the complainant's cause arises under the Constitution, law or treaty of the United States.

U. S. Constitution, Art. 3, Sec. 2.
Revised Statutes of the U. S. Chap. 11, Title 13, Sec. 709.
Grace et al. *v.* American Cent. Ins. Co., 109 U. S., 278, 283.
Ex parte Smith, 94 U. S., 455.
Peper *v.* Fordyce, 119 U. S., 469.

(B) A Federal Circuit Court can not reverse, or set aside, a judgment for decree of a State court which had complete jurisdiction over the parties and subject-matter, neither has it jurisdiction to entertain a bill seeking the rehearing of a cause in a State court, or to correct supposed errors in the proceedings in a State court.

Nougue *v.* Clapp, 101 U. S., 551, 554.
Forsyth *v.* Hammond, 166 U. S., 506, 516, 518.
Peck *v.* Jenness, 7 How., 612, 624.
Graver *v.* Faurot, 64 Fedr. Rep., 241, 243.

(C) The bill shows on its face that she had an adequate remedy at law. If the statute referred to in the bill is unconstitutional, or if it is rendered unconstitutional by the construction which the Supreme Court of the State gave it, or if she, by this statute or court, or by both combined, has been deprived of property or rights in the proceedings in the ejectment suit in the State courts, in violation of the Constitution or laws of

the United States, she had a plain, adequate and complete remedy by writ of error, from this court to the Supreme Court of Illinois, as provided by the revised statutes of the United States, Chap. 11, Title 12, Sec. 709, and the bill could not be maintained.

Revised Statutes of the United States, Chap. 12, Title 13, Sec. 723.

(D) If the statute violates the Federal Constitution, the State court, in the ejectment suit, had as perfect and full authority to so declare, as a court of equity, and it is the duty of the court of law to so declare. While on the other hand, if the statute is valid, it is as binding on a court of equity as on a court of law.

Baker *v.* Cumming, 169 U. S., 189, 206.

Balkman *v.* Woodstock Iron Co., 154 U. S., 177, 188.

Metropolitan National Bank *v.* St. Louis Despatch Co., 149 U. S., 436, 448.

Hardin *v.* Durand, 138 Ill., 515, 516.

Quayle *v.* Guild Admr., 91 Ill., 378 and 383.

Hancock *v.* Harper, 86 Ill., 445, 453.

Bradley *v.* Lightcap, 202 Ill., 154.

ARGUMENT.

I.

The amended bill as well as the original bill in this case, discloses the fact that there was an ejectment suit pending between the appellant and appellee, in the State Circuit Court in Fulton County, Illinois, involving the same subject-matter as contained in the bill; that the ejectment suit had been once tried in the State court, and an appeal taken to the Supreme Court of the State, where the judgment of the lower court was reversed and the cause remanded for retrial, in accordance with the views expressed by the State Supreme Court in its opinion. That a second trial had been had in the lower court which resulted in a judgment against appellant, that she has taken a new trial under the statutes of the State, by paying up the costs, and that the cause was then, at the

time the bill was filed, about to be again tried in the State court. The bills attacked the validity of the statute of the State which is set forth therein, and also the correctness of the decision of the State Supreme Court, in its opinion rendered at the time it reversed the judgment of the lower court, and remanded cause for new trial, which opinion is made a part of the bills, and seeks to enjoin further proceedings in the State court in the ejectment suit, and compel the parties to litigate their rights in the Federal court.

That the Federal Circuit Court made no error in sustaining appellee's demurrer to the bills and dismissing the same for want of jurisdiction, is in our judgment beyond question. Section 720 of Chapter 12, Title 13 of U. S. Revised Statutes, provides "the writ of injunction "shall not be granted by any court of the United States "to stay proceedings in any court of a State, except in "cases where such injunction may be authorized by law, "relating to proceedings in bankruptcy."

Here is a positive prohibition upon Federal courts, extending to all cases like the one at bar, prohibiting them from interfering with the proceedings in the State court. One can not read the bill in this case, without being impressed with the forcible application of what this court, speaking through Mr. Justice Bradley, said in Haines *v.* Carpenter, 91 U. S., 254. We quote the language: "In the first place the great object of the "suit is to enjoin and to stop litigation in the State "courts, and bring all the litigated questions before the "circuit court. This is one of the things which the Fed"eral courts are prohibited from doing. By the act of "March 2, 1793, it was declared that a writ of injunction "shall not be granted to stay proceedings in a State "court. This prohibition is repeated in Sec. 720 in the "Revised Statutes, and extends to all cases except where "otherwise provided by the bankruptcy law. This objec"tion alone is sufficient ground for sustaining a demur"rer to the bill."

In Rensalaer & S. R. Co. *v.* Bennington R. R. Co., 18th Fed. Rep., 617, the question was presented that a certain statute of Vermont was void, and it was sought to

enjoin certain proceedings in the State court which were based upon the statute. Mr. Justice Wheeler after stating the facts and quoting from Haines *v.* Carpenter, the above, said: "The rights of citizens of other States to "have their litigation tried in the Federal courts, are "provided for by statutes relating to removal of cases "from the State to the Federal courts, and to writs of "error from the Supreme Court of the United States to "the highest courts of the State, and are not left to be "effectuated by injunction. This conclusion renders the "examination of the constitutional question here unnec- "cessary, and in fact, improper. For this reason, the "bill can not be entertained."

In United States *v.* Parkhurst-Davis Co., 176, U. S. 317, Mr. Justice Brewer, in delivering the opinion of this court, quoted the extract above given in the opinion of Haines *v.* Carpenter, and added: "Without stopping to consider "any other question presented by counsel, this is suffi- "cient to sustain the ruling of the circuit court and the "decree is affirmed."

Other cases cited in our brief are equally as strong, and they comprise but a small number of those where this question has arisen and been disposed of in the same way by this court.

In addition to this statutory prohibition we submit:

II.

That the rule is firmly established that as between courts of concurrent jurisdiction, the court first acquiring jurisdiction will retain it, and will not be interfered with by another court.

This rule is founded not only on the rule of comity, but also of necessity. It is vital to the harmonious movements of courts, whose power may be exercised in the same sphere, and over the same person and subject-matter. The only course of safety, where one court has jurisdiction and possession of the case, lies in all other courts, with merely coordinate power, abstaining from any interference. Any other rule will, unavoidably, lead to perpetual collision and be productive of the most calamitous results.

It was said by the court, speaking through Mr. Justice Grier, in Peck *v.* Jenness, 7 How., 624: "It is a doc-"trine of law too long established to require a citation "of authority, that, where a court has jurisdiction, it has "a right to decide every question which occurs in the "case, and whether its decision be correct or otherwise, "its judgment until reversed, is regarded as binding in "every other court, and that when the jurisdiction of the "court, and the right of a plaintiff to prosecute his case "in it, have once attached, that right can not be arrested "or taken away by proceedings in another court. These "rules have their foundation not merely in comity but on "necessity. For if one may enjoin, the other may retort "by injunction, and thus the party be without remedy; "being liable to a process for contempt in one, if they "dare proceed in the other * * * in the case of "Kennedy *v.* The Earl of Cassilis, Lord Eldon at one "time granted an injunction to restrain a party from "proceeding in a suit in the Court of Sessions of Scot-"land, which, on more mature reflection, he dissolved; "because it was admitted, if the court of chancery could "in that way restrain proceedings in an independent "foreign tribunal, the court of sessions might equally "enjoin the parties from proceeding in chancery, and "thus they would be unable to proceed in either court. "The fact, therefore, that an injunction issues only to "the parties before the court, and not to the court, is no "evasion of the difficulties that are the necessary result "of an attempt to exercise the power over a party who is "a litigant in another and independent forum."

What was here said was reiterated by this court speaking through Mr. Justice Shiras in Central National Bank *v.* Stevens, 169 U. S., 459, and in addition thereto, this court said: "State courts are exempt from all in-"terference by the Federal tribunals, but they are desti-"tute of all power to restrain either the process or pro-"ceedings in the national courts. Circuit courts and "State courts act separately and independently of each "other, and in their respective spheres of action, the "process issued by one, is as far beyond the reach of the "other, as if the line of division between them 'was

"traced by landmarks and monuments visible to the eye.' "Appellate relations exists in a class of cases between "the State courts and this court, but there are no such "relations between the State courts and the Circuit "courts."

III.

Independent of the prohibition of Sec. 720 of the U. S. Revised Statutes, and the rule of comity and necessity, already discussed, the material facts set forth in the bills are not sufficient to confer jurisdiction on the Federal Circuit court.

This court has so often said the presumption is, a case is without the jurisdiction of the Federal court, unless the contrary affirmative appears, that it seems like a waste of time to repeat it. We will therefore content ourself by merely calling the court's attention to it, and pass to a consideration of the bill and the amended bill.

The original bill appears in the printed record from pages 2 to 46 and the amended bill pages 51 to 63. There is no material difference between the two, except the original has attached to it, as part thereof, the exhibits to which it refers, while the amended bill merely refers to them, and makes them a part thereof by reference.

The court, by an examination of the appellant's bills, will find nothing in either, even bordering on a Federal question, until she sets forth or refers to the opinion of the State Supreme Court in the ejectment suit, and makes the same a part of her pleadings. After this, she proceeds to aver [P. R., p. 6 and p. 56.] "That the controversy involved in said litigation (i. e., the ejectment suit), was as to the effect of the statute of the State of Illinois, Sec. 30, Chap. 77," etc., etc., following the averment by setting forth the section of the statute complained of, after which she sets forth a part of the opinion of the Supreme Court. Then, after stating that there was no express statutory limitation upon the time for taking out a deed on a certificate of purchase, nor any established by the court, until after the McCune trust deed was executed, she goes on to state *her* version of the law of Illinois, relating to mortgages, as established

by the decisions of the Supreme Court, and the effect of a foreclosure or an effort to foreclose a mortgage, and failure to redeem, etc., etc. (It will be observed that the bill in speaking of "a foreclosure" does not say what kind of a foreclosure and we would suggest that there is a very broad and marked distinction between a strict foreclosure, or an effort at strict foreclosure, and a common or simple foreclosure, like the foreclosure of the McCune trust deed, which is a proceeding to collect the debt by sale of the mortgaged premises.)

It is because the State Supreme Court did not agree with her, in her version of the laws of Illinois relating to mortgages, and the effect of a valid foreclosure and sale, and in the construction and application of the statute complained of, that she seeks the aid of the Federal Circuit Court. But how, and in what way was that court to aid her? If the Federal court found the law of Illinois to be, as the Supreme Court of the State says it was, and that the statute complained of, was correctly construed and applied, it would necessarily have to deny her the relief asked for. It could only grant her the relief on finding that the State Supreme Court erred in its judgment as to the law and its application. What was this, more or less, than making a Court of Review out of the Federal Circuit Court, to review and correct alleged errors made by the Supreme Court of the State, on the ground, that such errors, if they existed, contravened some provision of the Federal Constitution.

We have been unable to find any authority which would bring the object and scope of the bills in this case within the jurisdiction of the Federal Circuit Court, and we were cited to none, by the learned counsel representing appellant, when the case was presented in the lower court.

In Nougue *v.* Clapp, 101 U. S., 551, this court held that the Circuit Court of the United States can not revise, or set aside, the final decree rendered by a State court which has complete jurisdiction of the parties and subject-matter.

The Federal Circuit Court has no supervisory power over a State court, either by injunction or any other

similar method, and no appellate relations exist between the two. There is not a question of fact, or law, presented in the bill or amended bill that was not, or might not, have been presented upon the record in the ejectment suit, at the first trial of the same. In fact, the decision of the Supreme Court, in the ejectment suit, upon the questions which were actually and directly presented to that court for its determination and judgment, is made the basis of the bill, and is the only ground on which the claim of a Federal question rests. There is, and can be, no question raised as to the jurisdiction of the State tribunal. In fact, the subject-matter in dispute, and the parties were peculiar within its jurisdiction, and having litigated the questions in a competent tribunal, and been defeated, can she litigate the same questions in another tribunal, acting independently and having no appellate jurisdiction? As was said by this court in Forsyth *v.* Hammond, 166 U. S., 516, 518: "The "question is, not whether the judgment of the Supreme "Court would be conclusive as to the questions involved, "in another action, between other parties, but whether it "is not binding between the same parties in that, or any "other forum? The principles controlling the doctrine "of *res judicata* have so often been announced and are so "universally recognized, that the citation of authorities "is scarcely necessary. Though the form and cause of "action be different, a decision by a court of competent "jurisdiction, in respect to any essential fact, or ques"tion, in the one action, is conclusive between the parties "in all subsequent actions."

It is no answer to the application of the principle *res judicata* that the question sought to be raised by the bills was not raised, or was not raised in such a way, or form, as would permit of a reexamination and review of them by this court. The principle applies, not only to points upon which the court was actually required to form an opinion, or pronounce judgment, but to every point which properly belonged to the subject-matter of litigation, and which the parties might have brought forward at the time. In Beloit *v.* Morgan, 7 Wall., 621, this court, speaking through Mr. Justice Swain, said:

"It extends not only to the question of fact and law, "which were decided in the former litigation, but also "to the grounds of recovery or defense which might "have been, but were not presented."

That she did not make and preserve in the record in the ejectment suit, on its first trial in the State Circuit Court, and in the State Supreme Court on the appeal, the questions which would permit of this case being brought into this court by writ of error, does not militate against the application of the doctrine of *res judicata*. She might have done so.

By the original and amended bill she deliberately avers, and admits, that every claim and right, to the lands, which she has, was presented in and by the record of the trial of the ejectment suit, and was presented to the Supreme Court. In the original bill, P. R., p. 10, and in the amended bill, P. R., p. 60, will be found this deliberate statement: "But oratrix will not be able, at that time (i. e., retrial of the ejectment suit), to offer any other or different defense than she has already presented, and under the decisions of the Supreme Court of Illinois, construing and applying the said act of 1872 to deprive her of vested property, and contract right, the result of such trial must, necessarily, be adverse to oratrix, and result in a judgment from which she could not obtain relief, unless the court shall grant the relief herein prayed, and defendant be enjoined from the further prosecution of said suit." It will be seen that the reason she files her bill, is because the State Supreme Court, in construing and applying the act of 1872, "deprived her of vested property and contract right." If that is true, then the Federal question is to be found in the proceedings in the ejectment suit and must be determined in the suit in which it arose, and not in an independent suit for the purpose. If the statute violates the Federal Constitution, or if a certain construction of it renders it obnoxious to that instrument, the courts of law of the State have perfect authority to so declare, and it is their duty to so declare in any proceeding where the validity of the statute, or its construction, arises, and if the highest court of the State erroneously upholds it, or

places a construction upon it which renders it obnoxious to the Federal Constitution, the remedy of the party aggrieved is by writ of error, from this court to the State Supreme Court, as provided by Sec. 709, Chap. 11, Title 13, of the Revised Statutes of the U. S., which affords a complete and adequate remedy at law, so that a court of equity would have no jurisdiction to inquire into the validity of the statute, or the application or construction of the same, by the State Supreme Court, which was the subject-matter under consideration, in litigation already begun and then pending in a court of law. Nor does her failure to properly raise and preserve the Federal question in the proceedings at law, authorize a court of chancery to interfere, nor render any the less conclusive upon the Federal Circuit Court, the decision of the State Supreme Court. Johnson Co. *v.* Wharton, 152 U. S., 252, 256, 260 and cases cited.

The principles of law announced by the State Supreme Court, on the appeal in the ejectment suit, became the law in the case, binding alike on all courts, even the State Supreme Court, on second appeal, until reversed by this court which alone has supervisory power over the decision of that court.

In Manufacturing Co. *v.* Wire Fence Co., 119 Ill., 30, 42, the Supreme Court of Illinois, in passing upon the conclusiveness of a prior decision in the same case said: "We are not at liberty to review and overrule any former "ruling in the case. It is well settled, and, as we under-"stand, not denied by counsel for appellant, first, where "a question of either law or facts, is decided by this court "in a case properly before it for such decision, the same "question can not be again raised in that case, except "upon petition for rehearing; second, where a case has "been heard in the trial court, reviewed in this court "and remanded to the trial court with direction as to "the decree it shall enter, on a subsequent appeal to this "court, error can not be assigned for any cause that "existed prior to the former decision in this court."

In Reid *v.* West, 70 Ill., 479, the Supreme Court expressly declared that "it has no power to review its "previous judgment, except upon a petition for a re-

"hearing, presented in accordance with the rules estab-"lished for that purpose."

The reports of the decisions of the Supreme Court of Illinois contain numerous decisions of that court, that a second appeal in the same case, where the first decision covers the merit of the controversy, brings up only the subsequent proceedings had after the mandate of the court of last resort was sent down. This also is the doctrine held by this court, a case illustrative of which is Washington Bridge Co. *v.* Stewart et al., 3 How., 424, 425, where this court announced the same principles as are announced by the Supreme Court of Illinois.

It is a settled rule that where a party has a right which he might have enforced through the aid of a court at law, but instead of calling upon the court for that purpose, he sleeps upon his rights until his right to call upon the court of law for assistance is barred by the statute of limitation, a court of equity will not thereafter afford him any relief; also that where there is a legal and an equitable remedy in respect to the same subject-matter, the latter is under the control of the same statutory bar as the former.

In Metropolitan National Bank *v.* St. Louis Despatch Co., 149 U. S., 448, this court said: "Courts of equity in cases of concurrent jurisdiction consider themselves bound by the statute of limitation which governs actions at law."

And this is repeated with approval in Baker *v.* Cummings, 169 U. S., 206.

Applying these principles to the facts in this case, what is the result? Her bills show that she had the right to demand a deed for the land in controversy on the 28th day of January, 1881, and thereafter at any time within the next five years. The deed, when executed by the master, would have as completely and perfectly vested in her the absolute title and estate in the premises, and would have been as perfect and complete protection to her, as the relief which she now asks for at the hands of the chancellor; and further she had, during the entire term of five years, the unquestionable right to compel the execution of the deed by *mandamus* which

afforded her a full, perfect and complete remedy at law.

Now having failed through her own negligence to seek the remedy which the law offered her, until her right to resort to that forum is barred by the statute, what valid excuse does she offer for her laches? We fail to find any in her bill, and none has ever been called to our attention. There is no valid excuse, and now to call upon a court of equity to grant the relief prayed for, is nothing short of asking that court to annul the mandate of the statute complained of.

As the correctness of the decision of the State Supreme Court which the bills attack, is involved and will form one branch of Bradley *v.* Lightcap, No. 243, on the docket of this court, and this case is to be heard with that, we deem it unnecessary to repeat what we have said in regard to the opinion and laws of Illinois in our brief and argument in that cause, but will ask the court to consider the same as though repeated herein.

We submit, the Federal Circuit Court made no error in sustaining the demurrer to the bill and amended bill, and that its decree should be affirmed.

Respectfully submitted,

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